

AOL TESTIMONY
BEFORE THE COMMUNICATIONS SUBCOMMITTEE
OF THE SENATE COMMERCE COMMITTEE
July 27, 1999

Chairman Burns, Senator Hollings and Members of the Subcommittee, I would like to thank you, on behalf of America Online, for the opportunity to discuss online privacy with you today. My name is Jill Lesser, and I am the Vice President for Domestic Policy at AOL.

Privacy is an extremely important issue because the online medium is quickly revolutionizing the way we learn, communicate, and do business. People are migrating to the Internet to meet their commerce and communication needs at an extraordinary rate because it is convenient and fast, and offers an ever-growing selection of information, goods and services. AOL subscribers can sign on to our service and do research, shop for clothes, and buy airline tickets all in a matter of minutes.

In addition, the online environment offers users unique benefits of customization and personalization. Consumers can communicate specific preferences online that will allow them to receive information targeted to their own interests. For instance, AOL members can set their online preferences to get the weather forecast for their own zip code, read news stories about their own hometown, or receive notices about special discounts on their favorite CDs. No other commercial or educational medium has ever afforded such tremendous potential for personalization.

But the power of the Internet can only be fully realized if consumers feel confident that their privacy is properly protected when they take advantage of these benefits. We know very

well that if consumers do not feel secure online, they will not engage in online commerce or communication -- and without this confidence, our business cannot grow. For AOL, therefore, protecting our members' privacy is essential to earning their trust, and this trust is, in turn, essential to building the online medium. We learned this important lesson through our own mistakes not too long ago, when an AOL employee wrongly revealed the screen name of one of our members to the government.

Recognizing the importance of this issue, AOL has taken a number of steps to create an environment where our members can be certain that their personal information and their choices regarding the use of that information are being respected: from creating and implementing our own privacy policies and educating our members about them, to promoting best practices among our business partners, to engaging in industry-wide initiatives and enforcement mechanisms that will raise the bar for all companies who do business online.

Although the Internet is growing at a tremendous pace, we are still only at the beginning of the development of this new medium. Industry initiatives are helping to craft the "rules of the road" that will dictate online business practices, and we believe that it is important to see how those rules develop rather than imposing a sweeping regulatory framework on the Internet and e-commerce. Therefore, we hope to continue working with policymakers, consumer groups, and industry colleagues to promote industry-led, market-driven initiatives that will build on the progress we have already made and ensure that individual privacy is protected online.

Setting an Example

AOL is committed to protecting consumer privacy. Building on the lessons we have learned and the input we have received from our members, we have created privacy policies

that clearly explain to our users what information we collect, why we collect it, and how they can exercise choice about the use and disclosure of that information. We update our policies and procedures to respond to changes in technology or consumer demand, but our commitment to core privacy protections remains constant. AOL's current privacy policy is organized around 8 core principles:

- (1) We do not read your private online communications.
- (2) We do not use any information about where you personally go on AOL or the Web, and we do not give it out to others.
- (3) We do not give out your telephone number, credit card information or screen names, unless you authorize us to do so. And we give you the opportunity to correct your personal contact and billing information at any time.
- (4) We may use information about the kinds of products you buy from AOL to make other marketing offers to you, unless you tell us not to. We do not give out this purchase data to others.
- (5) We give you choices about how AOL uses your personal information.
- (6) We take extra steps to protect the safety and privacy of children.
- (7) We use secure technology, privacy protection controls and restrictions on employee access in order to safeguard your personal information.
- (8) We will keep you informed, clearly and prominently, about what we do with your personal information, and we will advise you if we change our policy.

We give consumers clear choices about how their personal information is used, and we make sure that our users are well informed about what those choices are. For instance, if an AOL subscriber decides that she does not want to receive any targeted marketing notices from us based on his personal information or preferences, he can simply check a box on our service that will let us know not to use his data for this purpose. Because we know this issue is so critically important to our members and users, we make every effort to ensure that our privacy policies are clearly communicated to our customers from the start of their online experience, and we notify our members whenever our policies are changed in any way.

We also make sure that our policies are well understood and properly implemented by our employees. We require all employees to sign and agree to abide by our privacy policy, and we provide our managers with training on how to ensure privacy compliance. We are committed to using state-of-the-art technology to ensure that the choices individuals make about their data online are honored. And, we believe that our commitment to consumer privacy and the means we give our subscribers to exercise their privacy prerogatives gives us a clear and meaningful market advantage in attracting and retaining subscribers.

Finally, we try to keep users informed about the steps they can take to protect their own privacy online. For instance, we emphasize to our members that they must be careful not to give out their personal information unless they specifically know the entity or person with whom they are dealing, and we encourage them to check to see whether the sites they visit on the Web have posted privacy policies.

Protecting Children Online

AOL takes extra steps to protect the safety and privacy of children online. One of our highest priorities has always been to ensure that the children who use our service can enjoy a safe and rewarding online experience, and we believe that privacy is a critical element of children's online safety.

We have created a special environment just for children -- our "Kids Only" area -- where extra protections are in place to ensure that our children are in the safest possible environment. In order to safeguard kids' privacy, AOL does not collect personal information from children without their parents' knowledge and consent, and we carefully monitor all of the Kids Only chat rooms and message boards to make sure that a child does not post personal information that could allow a stranger to contact the child offline. Furthermore, through AOL's "Parental Controls," parents are able to protect their children's privacy by setting strict limits on whom their children may send e-mail to and receive e-mail from online.

Because of the unique concerns relating to child safety in the online environment, AOL supported legislation in the 105th Congress to set baseline standards for protecting kids' privacy online. We worked with Senator Bryan, the FTC, and key industry and public interest groups to help bring the Child Online Privacy Protection Act (COPPA) to fruition last year. We believe the enactment of this bill was a major step in the ongoing effort to make the Internet safe for children.

Fostering Best Practices

In addition to adopting and implementing our own policies, AOL is committed to fostering best practices among our business partners and industry colleagues. One of the strongest examples of this effort is our "Certified Merchant" program, through which we work with our business partners to guarantee our members the highest standards of privacy and customer satisfaction when they are within the AOL environment. AOL carefully selects the merchants we allow in the program (currently there are over 150 participants), and requires all participants to

adhere to strict consumer protection standards and privacy policies. The Certified Merchant principles are posted clearly in all of our online shopping areas, thereby ensuring that both consumers and merchants have notice of the rules involved and the details of the enforcement mechanisms, which help to foster consumer trust and merchant responsiveness.

Here are the criteria that our merchants have to meet in order to become certified and to display the America Online Seal of Approval (some screen shots that show how these criteria appear to subscribers on our service are attached to this testimony):

1. Post complete details of their Customer Service policies, including: Contact Information, Shipping Information, Returns Policies, and Money-Back Satisfaction Guarantee Information.
2. Receive and respond to e-mails within one business day of receipt.
3. Monitor online store to minimize/eliminate out-of-stock merchandise available.
4. Receive orders electronically to process orders within one business day of receipt.
5. Provide the customer with an order confirmation within one business day of receipt.
6. Deliver all merchandise in professional packaging. All packages should arrive undamaged, well-packed, and neat, barring any shipping disasters.
7. Ship the displayed product at the price displayed without substituting.
8. Agree to adopt privacy policies that comport with AOL's privacy policy.

Through our Certified Merchant program, we commit to our members that they will be satisfied with their online experience, and we have developed a money-back guarantee program to dispel consumer concerns about shopping online and increase consumer trust in this powerful new medium. We believe that these high standards for consumer protection and fair information practices will help bolster consumer confidence and encourage our members to engage in electronic commerce.

Helping to promote industry efforts

The online industry as a whole is taking positive steps toward protecting consumer privacy. In fact, to improve industry's commitment to online privacy, AOL joined with other companies and associations last year to form the Online Privacy Alliance (OPA), a group dedicated to promoting privacy online.

As you will hear today, the OPA has worked hard to develop a set of core privacy principles -- centered around the key concepts of notice, choice, data security, and access -- and its members are committed to posting and implementing privacy policies that embody these principles. Since we began our efforts just a few months ago, the OPA has grown to include more than 85 recognized industry leaders, and industry efforts to protect consumer privacy online have blossomed.

A recent study conducted by Georgetown University Professor Mary Culnan shows that, in a sample drawn from a pool of the 7500 most visited websites, more than 65% of the sites have posted a privacy policy or a statement about their information practices. This number demonstrates a tremendous increase from the number of sites posting policies just one year ago, when the FTC conducted a similar study.

Following closely on the heels of the Georgetown study, the FTC released its report to Congress on the status of the industry's efforts to protect consumers' online privacy and presented testimony before this Subcommittee. Based on the progress of industry itself, the report concluded that legislation to address online privacy was not appropriate at this time. The FTC credited "responsible elements in the online business community" with accomplishing a great deal in a short amount of time. While the report recognized that more needs to be done to

secure consumers' online privacy, it concluded that industry was best positioned to take the leadership role in those efforts because it is "the least intrusive and most efficient means to ensure fair information practices online, given the rapidly evolving nature of the Internet and computer technology."

We concur with the FTC's conclusions; private sector leadership in developing fair information practices online is the right approach to assuring broad privacy protection in that environment, but we also realize that there is still more work to be done. To that end and to build on our success to date, the OPA has renewed its commitment to reach out to businesses nationwide to explain the importance of protecting online privacy and posting meaningful privacy policies.

We believe that the OPA member companies are setting a new standard for online privacy, and that as consumers become more aware of the choices available to them, the marketplace will begin to demand robust privacy policies of all companies that do business online. But we also understand the need for meaningful enforcement of industry standards. That's why we abide by the OPA requirement to participate in robust enforcement mechanisms through our involvement in the TrustE and BBBOnline privacy seal programs. We are key sponsors of both the TrustE and BBBOnline privacy seal programs, and have worked closely with industry representatives and members of the academic community to help formulate strict standards for seal eligibility.

The Challenges Ahead

It is clear that companies are responding to the increasing marketplace demand for

online privacy, and that the tremendous growth of e-commerce reflects positive trends on a variety of consumer protection issues, including privacy. But our work has only just begun. As technology makes it easier for companies to collect and use personal information, the adoption and implementation of robust privacy policies will become even more important.

In part, we believe that technology holds the key to ensuring a safe and secure online environment. As an online service provider, we believe it is critical for us to be able to provide the most sophisticated security technologies to our members so that they can take steps to protect their own privacy online. That's why we will continue to advocate the widespread availability and use of strong encryption, both in this country and abroad.

The challenges that lie ahead will give us the chance to prove that industry and government can work together to promote online privacy. But ultimately, it is the consumer who will be the judge of whether these efforts are adequate. Because no matter how extraordinary the opportunities for electronic commerce may be, the marketplace will fail if we cannot meet consumers' demands for privacy protection and gain their trust.

Legislative PROPOSALS

The focus of today's hearing is legislation designed to extend the privacy provisions in COPPA to adults -- the Online Privacy Protection Act of 1999, S. 809 -- sponsored by Chairman Burns and Senator Wyden. AOL urges the Committee to proceed with great caution in considering this or any legislation that would extend regulation of the Internet beyond what is currently in force. Not only is generally privacy regulation premature, but we are concerned about unanticipated consequences that could affect the growth of electronic commerce or otherwise harm consumers and/or the industry.

As the Georgetown study showed and the FTC report confirmed, industry led efforts have resulted in a tremendous increase in website adoption of privacy policies in a very short amount of time. And, as AOL has testified, industry is committed to continuing those efforts to achieve even greater progress in the future. Consequently, it is premature to consider legislation to address any gaps in self-regulation until it becomes apparent where such gaps would be. As the FTC report concluded, industry-led efforts to address online privacy are “the least intrusive and most efficient means” to accomplish the important public policy objective of creating a secure online environment for consumers. Private sector efforts should be given an opportunity to mature fully before Congress considers seriously whether further privacy legislation is necessary or prudent.

This is not to say that Congress should be any less vigilant in tracking industries’ progress and identifying areas where legislation is appropriate. For example, as noted previously, AOL supported COPPA because of the unique concerns related to child safety in the online environment. However, even that legislation, which was carefully crafted and widely vetted, is raising challenging interpretation and implementation issues for the FTC and for the industry. Just last week, the Commission convened a special workshop in an attempt to get a better understanding of the myriad issues involved in obtaining verifiable parental consent, including whether the federal regulation proposed would discourage Internet start ups from offering content designed for children.

With respect to the specifics of S. 809, AOL urges the Committee to consider focusing not on a regulatory framework for online privacy, but rather on strengthening the FTC’s enforcement authority to prevent fraudulent business practices. In that way, the “bad guys” can be stopped and the “good guys” can continue to serve consumers with innovative services and

products. Our research shows that consumers are most interested in an honest exchange. They see the benefit of the services they receive online, but want to ensure that they know who will have access to any information they give out and how it will be used.

SUMMARY

We at AOL are committed to doing our part to protecting personal privacy online. Our customers demand it, and our business requires it -- but most importantly, the growth and success of the online medium depend on it. We appreciate the opportunity to discuss these important issues before the Committee, and look forward to continuing to work with you on other matters relating to the Internet and electronic commerce.